

Memorandum of Decision: 04-20210120
Gross Retail Tax
For March 1, 2018, through February 28, 2021

NOTICE: IC § 4-22-7-7 permits the publication of this document in the Indiana Register. The publication of this document provides the general public with information about the Indiana Department of Revenue's official position concerning a specific set of facts and issues. The "Holding" section of this document is provided for the convenience of the reader and is not part of the analysis contained in this Memorandum of Decision.

HOLDING

The Department agreed with Indiana Healthcare Provider that it was entitled to a refund of sales tax it paid the Department attributed to sales to exempt customers from whom Healthcare Provider did not collect the tax.

ISSUE

I. Gross Retail Tax - Refund of Tax on Sales to Exempt Customers.

Authority: IC § 6-2.5-2-1; IC § 6-2.5-8-8; IC § 6-2.5-9-3; [45 IAC 2.2-8-12](#).

Taxpayer argues that it is entitled to a refund of sales tax paid to Indiana because Taxpayer erroneously paid the tax on sales of tangible personal property to exempt customers from whom it had neither charged nor collected the tax.

STATEMENT OF FACTS

Taxpayer is an out-of-state company in the business of providing health care facilities with medical technology and diagnostic services. Taxpayer sold tangible property to Indiana customers. According to Taxpayer it erroneously remitted Indiana sales tax.

Taxpayer submitted a refund claim for approximately \$30,000 in sales tax paid Indiana. It claimed the refund because Taxpayer paid the tax, did not collect the tax from Indiana customers, and that certain customers were exempt from Indiana sales tax.

The Indiana Department of Revenue ("Department") reviewed the claim and responded in a letter dated June 3, 2021, in which the Department denied the claim. The Department's explanation follows:

A review of the [T]axpayer's financials and documentation provided with the refund claim was completed. A letter explaining the claim was provided with a notation that the invoices would be provided upon auditor request. However, after several attempts, the auditor was unable to reach anyone who could assist with the claim. Due to lack of information regarding the claim and none of the sales tax accounts amended to reflect the amounts, the refund is being denied.

Taxpayer disagreed with the Department's decision denying the refund and submitted a protest to that effect. An administrative hearing was conducted by telephone during which Taxpayer's representatives explained the basis for the protest. This Memorandum of Decision results.

I. Gross Retail Tax - Refund of Tax on Sales to Exempt Customers.

DISCUSSION

The issue is whether Taxpayer has provided information sufficient to establish that it paid specific amounts of Indiana sales tax on transactions with exempt customers from whom it did not itself collect the tax. As such, Taxpayer is required to establish the amount of sales tax to which it is entitled, that the underlying retail transactions were exempt, and that it filed a timely request for the amounts sought.

Indiana imposes an excise tax called "the state gross retail tax" (or "sales tax") on retail transactions made in Indiana. IC § 6-2.5-2-1(a). A person who acquires property in a retail transaction (a "retail purchaser") is liable for the sales tax on the transaction. IC § 6-2.5-2-1(b). However, IC § 6-2.5-2-1(b) requires the retail merchant to

collect the tax as an agent for the state. IC § 6-2.5-9-3 states that a retail merchant has a duty to remit Indiana gross retail tax to the Department, holds those taxes in trust for the State, and is personally liable for the payment of those taxes to the State.

Nonetheless, certain non-profit entities are exempt from paying the tax. Insofar as the relationship between the purported non-profit and a retailer, IC § 6-2.5-8-8(a) provides for sales tax exemption certificates in pertinent part as follows:

A person, authorized under subsection (b), who makes a purchase in a transaction which is exempt from the state gross retail and use taxes, may issue an exemption certificate to the seller instead of paying the tax. The person shall issue the certificate on forms and in the manner prescribed by the department. A seller accepting a proper exemption certificate under this section has no duty to collect or remit the state gross retail or use tax on that purchase.

[45 IAC 2.2-8-12](#)(d) clarifies the law concerning exemption certificates in pertinent part as follows:

Unless the seller receives a properly completed exemption certificate the merchant must prove that sales tax was collected and remitted to the state or that the purchaser actually used the item for an exempt purpose. It is, therefore, very important to the seller to obtain an exemption certificate in order to avoid the necessity for such proof

Pursuant to the statute and explanatory regulation, the production of a valid exemption certificate exempts the merchant from the duty of collecting and remitting sales tax. Without a valid exemption certificate, the burden shifts back to the merchant to prove that the sales were not actually subject to sales tax.

Taxpayer provided valid exemption certificates for several of the transactions for which Taxpayer had initially charged the customers sales tax. For example, customer purchased an item which cost \$100; Taxpayer billed the customer \$107 which - of course- included seven percent sales tax. Customer paid the bill but paid only the \$100 on the ground that the purchase was exempt. Nonetheless, in calculating sales tax due the state, Taxpayer sent the \$7 to the state because that was the amount listed in its sales records. In other words, Taxpayer paid the \$7 out of its own pocket.

The Taxpayer had no duty to collect and remit sales tax on these transactions. Taxpayer provided documentation that it originally reported the transactions as taxable, that the exempt customer paid the invoice but did not pay the sales tax amount, and that Taxpayer erroneously paid the tax to the state of Indiana.

In brief, Taxpayer sold tangible personal property to exempt entities, reported the sales as taxable, paid those tax amounts to the Department, and now asks that the tax be refunded.

In support of its argument, Taxpayer provided specific examples of these transactions; Taxpayer provided a copy of an invoice billed to exempt educational institution, that institution's ST-105 "general sales tax exemption," its "sales journal" which ties that transaction to the sales tax return filed with the Department and exempt educational institution's cancelled check.

Taxpayer has met its burden of establishing that it should not have paid sales tax to the Department in these instances and that it is now entitled to a refund of those amounts. Subject, of course, to a review of Taxpayer's documentation sufficient to verify the extent of the refund amount requested and to the extent permitted by the three-year statute of limitations, Taxpayer's protest is sustained.

FINDING

As specified by this Memorandum of Decision, Taxpayer's protest is sustained.

April 8, 2022

Posted: 06/29/2022 by Legislative Services Agency
An [html](#) version of this document.